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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

CISCO SYSTEMS, INC.,

Case No. 5:14-cv-05344-BLF (NC)

Plaintiff,

V.

ARISTA NETWORKS, INC.

Defendant.

**DECLARATION OF DAVID J. ROSEN
IN SUPPORT OF PLAINTIFF CISCO
SYSTEMS, INC.'S ADMINISTRATIVE
MOTION TO FILE UNDER SEAL
CONFIDENTIAL INFORMATION IN
CISCO'S TRIAL BRIEF RE:
COPYRIGHTED WORK (ECF 631)**

Judge: Hon. Beth Labson Freeman

Date Filed: December 5, 2014

Trial Date: November 21, 2016

**DECLARATION OF DAVID J. ROSEN IN SUPPORT OF CISCO'S
ADMINISTRATIVE MOTION TO FILE UNDER SEAL (ECF 631)**

1 I, DAVID J. ROSEN, declare:

2 1. I am an attorney licensed to practice law in the State of California and am an
 3 associate with the law firm of Keker & Van Nest LLP, located at 633 Battery Street,
 4 San Francisco, California 94111, counsel for Defendant Arista Networks, Inc. (“Arista”) in the
 5 above-referenced action. Unless otherwise stated, the facts I set forth in this declaration are based
 6 on my personal knowledge or knowledge I obtained through my review of corporate records or
 7 other investigation. If called to testify as a witness, I could and would testify competently to such
 8 facts under oath.

9 2. I submit this declaration in support of the Administrative Motion to File Under
 10 Seal Confidential Information in Cisco’s Trial Brief Re: Copyrighted Work filed by Plaintiff
 11 Cisco Systems, Inc. (“Cisco”) on November 10, 2016 (ECF 631). I have reviewed Cisco’s
 12 Motion to Seal and the Civil Local Rules of this Court governing such motions, and submit this
 13 supporting declaration under Civil L.R. 79-5(e).

14 3. Cisco’s Motion to Seal seeks to file under seal documents and information
 15 submitted in connection with its trial brief on copyrighted work, which is a non-dispositive brief.
 16 Because Cisco’s Motion to Seal relates to non-dispositive briefing, the documents and
 17 information that the parties request to file under seal are **not** subject to a strong presumption of
 18 public access. *See Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1180 (9th Cir.
 19 2006). Rather, the “good cause” standard of Rule 26(c) of the Federal Rules of Civil Procedure
 20 applies to the material that Cisco’s Motion to Seal seeks to withhold from public view. *Id.* at
 21 1179. Civil Local Rule 79-5 further requires that a party seeking to seal information and
 22 documents “establish[] that the document, or portions thereof, are privileged, protectable as a
 23 trade secret or otherwise entitled to protection under the law.” Civil L.R. 79-5(b). The sealing
 24 request must also “be narrowly tailored to seek sealing only of sealable material.” *Id.* I submit
 25 this declaration to provide additional facts in support of Cisco’s Motion to Seal, and to provide
 26 facts establishing that the “good cause” standard has been met for materials that Arista seeks to
 27 file under seal.

1 4. For purposes of a motion to seal, I understand that a “trade secret” is “any formula,
 2 pattern, device or compilation of information which is used in one’s business, and which gives
 3 him an opportunity to obtain an advantage over competitors who do not know or use it.” *See In*
 4 *re Elec. Arts, Inc.*, 298 F. App’x 568, 569–70 (9th Cir. 2008) (nonprecedential) (quoting
 5 Restatement (First) of Torts § 757 cmt. b (1939)) (applying the Restatement’s definition of trade
 6 secret in the record-sealing context); *Clark v. Bunker*, 453 F.2d 1006, 1009 (9th Cir. 1972)
 7 (adopting the Restatement’s definition of trade secret).

8 5. I further understand that good cause—indeed, compelling reasons—may exist to
 9 file materials under seal when, for example, court filings could be used for improper purposes,
 10 such as “to gratify private spite, promote public scandal, circulate libelous statements, or release
 11 trade secrets.” *Kamakana*, 447 F.3d at 1178–79 (citation omitted). I further understand that good
 12 cause and compelling reasons may exist where court filings contain or discuss confidential source
 13 code, *see Apple, Inc. v. Samsung Electronics Co., Ltd.*, No. 11-cv-1846, D.I. 2190 at *3 (Dec. 10,
 14 2012); internal and non-public procedures of financial institutions, *see Cowan v. GE Capital*
 15 *Retail Bank*, No. 13-cv-03935-BLF, 2015 WL 1324848, at *1-3 (N.D. Cal. Mar. 24, 2015);
 16 information about an entity’s confidential “business performance, structure, and finances that
 17 could be used to gain unfair business advantage against them,” *Schwartz v. Cook*, No. 15-cv-
 18 03347-BLF, 2016 WL 1301186, at *2 (N.D. Cal. Apr. 4, 2016); “highly sensitive information
 19 regarding [an entity’s confidential] product architecture and development,” *Delphix Corp. v.*
 20 *Actifio, Inc.*, No. 13-cv-04613-BLF, 2014 WL 4145520, at *2 (N.D. Cal. Aug. 20, 2014); emails
 21 containing confidential information about an entity’s “business practices, recruitment efforts, and
 22 discussions regarding potential partnerships with other product manufacturers,” *see Koninklijke*
 23 *Philips N.V. v. Elec-Tech International Co., Ltd.*, No. 14-cv-02737-BLF, 2015 WL 581574, at
 24 *1–2 (N.D. Cal. Deb. 10, 2015); and “information regarding non-public recruitment efforts and
 25 business practices” of a party. *See id.* at *2-3.

26 6. Cisco submitted a declaration in support of its Motion to Seal (ECF 631-1) that
 27 specifies that highlighted portions of its brief were filed under seal. The highlighted portion of
 28 lines 7–9 on page 2 of Cisco’s brief (ECF 631-3) discloses internal and confidential Arista

communications regarding feature-specific product development decisions relating to Arista products. There are compelling reasons to seal highly sensitive information about Arista's product development decisions. *See Delphix*, 2014 WL 4145520, at *2; *Koninklijke Philips*, 2015 WL 581574, at *1–2.

7. Arista does ***not*** seek to file under seal any other material highlighted in this document. Arista takes no position to the extent other parties or non-parties may seek to file under seal any of the material highlighted in this document.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on November 14, 2016, in San Francisco, California.

David Rees

DAVID J. ROSEN